CA-8402 (3)

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IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Single Bench

SECOND APPEAL NO. 403 OF 2005

APPELLANT/: (Defendant No.2)

Manohar Rao Dumbhare,
S/o Late Ram Bhau Dumbhare,
Aged about 52 years,
R/o Ambadevi Mandir Road,
Satti Bazaar, Raipur,
Tehsil & District: Raipur,
Chhattisgarh.

P.R. No. 2333/05 Registrar Bilaspur
Presented by Shri
dated 05/9/05

- Versus -

RESPONDENTS/: (Plaintiff)

1. S.P. Shukla,
S/o Late Matasharan Shukla,
R/o MIG-33, Tatibandh,
Raipur, Tehsil & Distt.: Raipur,
Chhattisgarh.

(Defendant No.1)

2. Bhaskar Rao Dumbhare,
S/o Ram Bhau Dumbhare,
Aged about 44 years,
R/o Ambadevi Mandir Road,
Satti Bazaar, Raipur,
Tehsil & District: Raipur,
Chhattisgarh.

शपथ आयुक्त
एन.के. शुक्ला
बिलासपुर (छ.ग.)
बिलासपुर तहसील कोर्ट

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE

XI-HC-22

(81)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक S.A.No. 403/05 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	07/09/2005 Shri H.S. Patel, Counsel for the appellant. Heard on admission and M.C.P.No.1312/2005. Plaintiff taking shelter of Section 12 (1) (b) of the Chhattisgarh Accommodation Control Act, 1961 (for short, "the Act") filed a civil suit for eviction against the defendants No. 1 and 2 averring that defendant No.1 took the shop situated at Shukla Complex, Tatibadh, Raipur, on a monthly rent of Rs.700/- from him who afterwards sublet the same or parted with the said shop in favour of defendant No.2. Defendant No.1 in his written statement admitted the fact that he took the shop on a monthly rent of Rs.700/- from the plaintiff, but subsequently defendant No.2 by force took possession of the said shop and now defendant No.2 is in possession of the shop. Defendant No.2 has pleaded that initially the shop has been taken on a monthly rent of Rs.400/- and rent was subsequently increased to Rs.575/-, from the plaintiff for carrying business of photo studio. He was in government service, therefore, the said business was operated by the defendant No.1 who was shown to be the owner of the business. Defendant No.1 failed to operate the said business and closed the same, therefore, defendant No.2 has taken the business in his own hand.	

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned trial Court passed the judgment and decree dated 25/04/2005 in Civil Suit No.412-A/2002 in favour of the plaintiff holding that the defendant No.1 took the shop from the plaintiff on a monthly rent of Rs.700/- who without permission of the plaintiff sublet the same to defendant No.2. Being aggrieved by the said judgment and decree, defendant No.2 preferred an appeal bearing Civil Appeal No.12-A/2005 and the same has been decided by the District Judge, Raipur vide his judgment and decree dated 09/08/2005. Learned District Judge also after evaluating the evidence maintained the findings of the trial Court and dismissed the appeal. Being aggrieved by the said judgment and decree dated 09/08/2005, this second appeal has been filed by the defendant No.2.

The suit has been filed on the ground that the defendant No.1 – tenant of the suit accommodation has handed over possession of the said shop to defendant No.2 without permission of the landlord by subletting the shop to him or otherwise handed over possession of the shop to defendant No.2. The issue arising out of the dispute raised by both the parties is issue of fact and has to be decided on the basis of evidence adduced by the parties in support of their respective case. After due evaluation of the evidence adduced by both the parties and considering the law

देखिये)

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

settled on the point both the Courts below decided the case in favour of the plaintiff.

Section 12 (1) (b) of the Chhattisgarh Accommodation Control Act, 1961 reads as below.

> ***12. Restriction on eviction of tenants – (1)*** *Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following ground only, namely:-*
>
> ***(b)*** *that the tenant has, whether before or after the commencement of this Act, unlawfully sub-let, assigned or otherwise parted with the possession of the whole or any part of the accommodation for consideration or otherwise."*

(पीछे देखिये)

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — ५ —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In the instant case, admittedly the landlord of the said premises is plaintiff. The suit premises was let for non-residential purpose. Defendant No.1 admitted that he took the shop on a monthly rent of Rs.700/- and pleaded that defendant No.2 forcibly took possession of the suit premises on 20/03/1999. Defendant No.2 also in his written statement admitted that the suit premises was taken on a monthly rent and defendant No. 1 was shown the owner of the business carrying on in the suit premises. Defendant No.2 averred that he was in government service. He also pleaded that defendant No.1 failed to continue the business, therefore, he took the business in his own hand.

From the above pleading itself, it is manifest that the suit premises was let on a monthly rent by the plaintiff to defendant No.1. Subsequently, defendant No.2 took possession of the suit premises. It means defendant No.1 parted with the possession of the suit accommodation for consideration or otherwise.

Taking into consideration all the facts and concurrent findings of both the Courts below, I am of the opinion that this second appeal does not contain any substantial question of law. Therefore, it is liable to be dismissed and is accordingly dismissed.

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	In the light of the above order, M.C.P.No.1312/2005 and I.A.No. 2423/2005 stand disposed of. Sd/- V.K.Shrivastava Judge	